

SERVICE DATE – NOVEMBER 25, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35965 (Sub-No. 1)

INDIANA SOUTHERN RAILROAD, LLC—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—NORFOLK SOUTHERN RAILWAY COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: November 20, 2015

By petition filed on October 5, 2015, Indiana Southern Railroad, LLC (ISRR), requests that the Board partially revoke the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as it pertains to the trackage rights arrangement exempted in Docket No. FD 35965,² to permit those trackage rights to expire on January 1, 2020.

ISRR states that the temporary trackage rights agreement (Agreement) between ISSR and Norfolk Southern Railway Company (NS) exempted in Docket No. FD 35965 is intended to grant ISRR limited overhead temporary trackage rights to operate over and provide rail service to one customer on a portion of NS's rail line between milepost 0.8 EJ at Oakland City Junction, Ind., and milepost 4.8 EJ at Enosville, Ind. Notice of the exemption in FD 35965 was served and published in the Federal Register on October 21, 2015 (80 Fed. Reg. 63,871). The transaction may be consummated on or after November 4, 2015, the effective date of ISSR's exemption.

DISCUSSION AND CONCLUSIONS

Although ISRR and NS have expressly agreed on the duration of the proposed Agreement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In that docket, on October 5, 2015, ISRR filed a Verified Notice of Exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). ISRR states that because the Agreement covered by this Notice is longer than a year in duration, the filing is not being made under the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8).

typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See, e.g., Union Pac. R.R.—Trackage Rights Exemption—Burlington N. & Santa Fe Ry., FD 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

ISRR's temporary trackage rights were already authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Granting partial revocation in these circumstances will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. §§ 10101(2), (4), (5), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35965 to expire on January 1, 2020.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35965 are exempted, as discussed above, to permit the trackage rights to expire on January 1, 2020, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice will be published in the Federal Register on November 25, 2015.
4. This decision is effective on December 25, 2015. Petitions to stay must be filed by December 7, 2015. Petitions for reconsideration must be filed by December 15, 2015.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.